# FACULTIES OF PASTORS AND CONFESSORS FOR ABSOLUTION AND DISPENSATION

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# FACULTIES OF PASTORS AND CONFESSORS

FOR ABSOLUTION AND DISPENSATION

According to the Code of Canon Law

BY

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# FOREWORD

Adapted substantially from the work of P. Emil Seiter, C.S.Sp., *Die Absolutions—und Dispensvollmachten der Seelsorger und Beichtväter* (ed. 1921), with the author's permission, this book aims primarily to be of service to pastors and confessors, by outlining for them precisely and clearly the faculties for absolution and dispensation which they may have, chiefly as granted by the Code itself. References to Canon Law as existing previous to the coming into force of the Code, have been omitted for the sake of clarity, so that present actual legislation might be more forcibly presented.

In countries like America, where ecclesiastical organization is yet rounding to perfection, there is need of increased knowledge and application of the Code of Canon Law, that stupendous and most magnificent work of modern legislation. This book, by its continual references to the Code, may promote better acquaintance with the latter's provisions, so that the

priest of God may indeed be *ad omne opus bonum instructus* (2 Tim. iii. 17). Ordinaries, likewise, may find these pages useful in composing the diocesan *pagella* of faculties. To seminarians this summary will be of assistance in the study of some intricate phases of Canon Law and Moral Theology.

May the following brief review of some of its organic regulations serve for the better functioning of all members of Christ's great mystical Body, which is the Church!

Octave of the Assumption
CALIENTE, NEVADA
1922.

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FIRST SECTION

# FACULTIES OF PASTORS AND CONFESSORS FOR ABSOLUTION

IN REGARD TO

I. PENITENTIAL JURISDICTION
II. RESERVED SINS
III. CENSURES

# FIRST PART

## Penitential Jurisdiction

The Sacrament of Penance, partaking in a manner of the nature of a judicial trial, requires in its minister, besides the priestly power of Sacred Orders, also the *power of jurisdiction* over the person appealing to this tribunal, as is plainly set down in the Council of Trent (Sess. 14, c. 7): "Since the very nature and method of a trial demand that sentence be pronounced only upon subjects [of the court], it has ever been the conviction of the Church of God, and the present Synod confirms this as correct, that any absolution which a priest may pronounce upon a person over whom he himself has neither *ordinary* nor *delegated jurisdiction,* is of no account."

*Approbation* for hearing confessions, formerly demanded by the Council of Trent (Sess. 23, c. 15) for validity of absolution conferred by religious priests on non-religious

penitents, has been classed by some theologians as a third distinct phase of penitential power. But according to the Code it is, to all intents and purposes, again practically merged with jurisdiction. Hence wherever the term is used in the Code (as, for example, in 518:1; 519; 522; 523; 882) it is to be understood in the sense of the conferring of jurisdiction.

## Ordinary Penitential Jurisdiction of Pastors and Exempt Regular Superiors

*Ordinary jurisdiction* is that which by law is annexed to an ecclesiastical office or dignity, and therefore is *ipso iure* enjoyed by the incumbent (197:1).[1]

*Bearers of ordinary penitential jurisdiction,* besides the Pope and the Cardinals (for the entire Church) and local Ordinaries[2] (for their respective territories)

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[1] Numbers in parentheses without other indications have reference to the Canons and subdivisions of the *Codex Iuris Canonici.*

[2] By the term *Ordinary* are understood, besides the Pope: a Bishop in full charge of a diocese; an Abbot or Prelate *"nullius"*; a Vicar General, an Apostolic Vicar, Prefect, or Administrator; likewise the higher Superiors (such as Generals and Provincials or their equivalent) of exempt Regular organizations of clerics (198:1). With the exception of Regular Superiors, any of the above-mentioned persons may be designated by the terms "local Ordinary" or "Ordinary of the place" (198:2).

and Canons Penitentiaries of cathedral and collegiate churches (for the whole diocese: 401: 1), are likewise:

1. *Pastors* in the strict technical acceptation of the term.

2. *Quasi-Pastors,* or priests who have charge of definitely bounded districts in Apostolic Vicariates and Prefectures (451: 2; 216: 3).

3. *Parochial Vicars* of various kinds, whenever they have *plenary pastoral powers.* Such are:

   (*a*) The priest in charge of a parish which is *pleno iure* conjoined with a monastery or convent or Chapter church or other moral person (471: 1).

   (*b*) The administrator of a parish (*vicarius oeconomus,* 472) during its vacancy of a pastor.

   (*c*) The substitute vicar who is to be appointed, with the Ordinary's agreement, to look after a parish whenever the pastor is about to be absent over seven days, (*vicarius substitutus,* 474; 465: 4).

(*d*) The pastor's assistant, who has full charge of a parish in the place of a pastor, incapacitated through old age or otherwise (*vicarius adiutor,* 475); *not,* however, the *ordinary assistants* of the pastor (*vicarii cooperatores,* 476).

4. *Military Chaplains,* in certain cases, according to the arrangements made by the Holy See for spiritual welfare in the military organizations of divers nations (451: 1).

5. *Rectors of Clerical Seminaries* (1368), although these indeed may hear confessions of their subjects only in case the latter themselves request it for a grave and urgent reason (891).

6. *Superiors of exempt Regular organizations,* for their own subjects, according to the regulations of their constitutions (873: 2; 875: 2).

In the last section above, among subjects are to be counted not only professed and novices, but also all those who either as servants or pupils or guests or patients live day and night in a house of the religious organization (875; 514:1). Nevertheless Regular Superiors may hear the confessions of their subjects only when these freely and of their own

impulse desire it. Without a very grave reason they should not be ordinary confessors for their subjects. Under no circumstances may they, personally or through others, strive to induce a subject to confess to them, by duress, fear, or ill advice (518: 2, 20). Masters of novices, and like officials, are especially cautioned against this (891).

## Exercise of Ordinary Penitential Jurisdiction

As the Pope, the Cardinals, the local Ordinaries and Canons Penitentiaries, so also pastors and exempt Regular Superiors can exercise their ordinary penitential jurisdiction in regard to their own *subjects everywhere,* even outside the territory of their pastorate (881: 2; 401: 1).

Whoever has ordinary jurisdiction can as a rule *delegate* it, in so far as the law does not expressly declare to the contrary (199: 1), as, for example, for the Canons Penitentiaries (401: 1).

The power of delegation is expressly granted to exempt Regular Superiors (875: 1). On the other hand, pastors can not be said to have the power to delegate their penitential jurisdiction to others. For the Code declares clearly that all secular and religious priests receive their delegated penitential jurisdiction from the Ordinary of the place of con-

fession (874:1; 875:2; 876:2; note also 874:2; 877–880), and every doubt in this matter is removed by the declaration of the Commission on the Interpretation of the Code, of October 16, 1919, *ad III;* (*Acta Sanctae Sedis,* 1919, p. 477). Only for hearing the confessions of subjects of their own exempt clerical organizations can jurisdiction be conferred also by Regular Superiors (875:1). Of course Ordinaries may empower pastors or others to subdelegate penitential jurisdiction, as is sometimes done for the benefit of these persons themselves or for that of relatives or others with whom they live, or whose confessions they themselves can not prudently hear.

## Loss of Ordinary Penitential Jurisdiction

Ordinary penitential jurisdiction is lost (873:3); (1) through loss of the office or dignity with which it is joined, that is to say, by resignation, removal, or transfer, by the close of the period of incumbency (183:1); (2) through death or loss of office on the part of the Superior who has conferred the jurisdiction or office, provided he has done so *"ad beneplacitum suum"* or with some similar clause (183:2); (3) through excommunication, suspension from office, and interdict, but only after condemnatory or declaratory sentence (873:3).

## Delegated Penitential Jurisdiction

*Delegated* jurisdiction, in contrast to ordinary, is not joined *ipso iure* with an office, but is specially conferred on a priest (197: 1), either by law itself (*iurisdictio delegata a iure*), or by a properly authorized possessor of ordinary jurisdiction, or by a delegate of the latter (*iurisdictio delegata vel subdelegata ab homine*).

In both cases there is either *direct* delegation,—that is, immediately from the delegating person himself, or —what occurs more rarely—*indirect* delegation, by the fact that a duly authorized penitent freely chooses a priest, and by this choice is the means of the latter's obtaining jurisdiction.

*Conferring of delegated jurisdiction* to hear the confessions of all faithful, whether religious or secular, on secular or *Regular*[3] priests, is done by the *Ordinary*

[3] Regular priests who have received jurisdiction from the local Ordinary should not make use thereof without the (at least presumed) permission of their own Superior. But a Regular Superior can not prevent one of his subjects from going to confession, for the peace of his conscience, to a member of the Reg-

*of the place* where the confessions are to be heard (874: 1).

Where the Holy See has erected exempt care of souls for the military (451:3), the military Ordinary can in many cases confer jurisdiction to hear members of the military, independently of the Ordinary of the place.

In exempt clerical religious Orders, besides the local Ordinary, the religious Superior also, according to the manner and measure of the organization's constitutions, can delegate jurisdiction to hear the confessions of professed, novices, and other inmates of the house, and this delegation he may confer not only on members of his own organization but also on secular priests and on priests of other Orders, Congregations or societies than his own (875: 1).

Similar privileges have generally been accorded also to non-exempt clerical Congregations, and these grants hold good also under the Code.

In order to be *valid* any conferring of jurisdiction, whether oral or in writing, must be made *expressly*.

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ular organization approved by the local ordinary alone. Such a confession, even without the Superior's permission, would be both valid and licit (874:1; 519; *S. C. de Relig.* Aug. 5, 1913).

Silent or tolerated delegation no longer suffices (879: 1).

In order to be *licit* any conferring of jurisdiction—as also permission on the part of Regular Superiors to hear confessions—demands that the prospective recipient shall have been found fit to administer the Sacrament of Penance; this fitness is to be established by examination, unless the recipient's sufficiency of theological knowledge is already otherwise assured (877: 1). If, later on, serious doubts regarding fitness should arise, a new examination is in order (877: 2). For licitness also it is required that no unjustified restrictions be made in the conferring of jurisdiction, and that it be done gratis (878: 2; 879: 2).

### Exercise of Delegated Jurisdiction

Delegated jurisdiction derived from the local Ordinary can be exercised only in the territory subject to him (874: 1; 201: 2).

The bearer of delegated jurisdiction can subdelegate it only when the power of subdelegation has been

granted him expressly by the delegating person (199:4); that is to say, the Pope, or the local Ordinary, or an exempt Regular Superior (Commission for Interpretation of the Code, October 16, 1919).

The subdelegated person, in turn, can resubdelegate his jurisdiction only when this faculty has been expressly granted by the original delegating person (199: 5).

## Penitential Jurisdiction Delegated by the Law Itself

The law itself delegates penitential jurisdiction to the following:

1. Any priest who has been approved for a place; that is, any secular or Religious who has ordinary or delegated jurisdiction for a locality may, while within that place or territory, administer the Sacrament of Penance to persons without any fixed place of abode (*vagi*) or to strangers or travelers from another diocese or parish (*peregrini*), even if they belong to an Oriental rite (881: 1).

2. *All* priests, when there is danger of death, even

those not approved or those that are censured, or irregular, or schismatic or heretic, can and may absolve all penitents from all sins and censures, even those reserved,[4] and notorious. Priests not approved can and may do this even in presence of one who is approved (882).

"In danger of death" is to be taken not only as *"in articulo mortis"*; that is, when death is undoubtedly impending, but also as *"in periculo mortis"*; that is, when it is seriously to be feared that death will soon take place; the latter case may be judged on the base of either experience or a physician's judgment. It is indifferent whether the danger of death is due to a subjective cause (sickness) or to an exterior one (serious danger of infection, impending battle, difficult birth, dangerous operation or perilous sea-voyage). Note here the declaration of the S. Penitentiary of March 18, 1912, according to which mobilized soldiers are *ipso facto* to be put on the same plane with persons who are in danger of death.

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[4] There are conditions attached only for the *absolutio complicis*. In that case, in danger of death, absolution is indeed always valid, but only allowed (*a*) when any other approved or non-approved priest either can not hear the confession of the dying person at all, or can not do so without great scandal or serious danger to the good name of the *sacerdos complex*; (*b*) when the dying person refuses to confess to a different priest (884).

3. Every priest traveling by sea who has received penitential jurisdiction from his own Ordinary, or from the Ordinary of the port of departure, or from the Ordinary of any port touched by the vessel during its voyage, can during the whole period of the voyage hear the confessions of all his fellow voyagers, even if the ship passes through the territories of different Ordinaries or makes halt therein (883: 1). The same holds good for the hearing of all persons who for any reason whatever come on board at harbor stops (883: 2). Should the priest who is making a sea voyage (and is authorized as stated above) go ashore for awhile at some stop, he may and can there hear all persons who wish to confess to him, and absolve them even from sins reserved to the local Ordinary of the place (883: 2).

4. Indirectly delegated jurisdiction is granted to priests not otherwise approved, who are selected by Cardinals or Bishops (even titular Bishops) to hear the confessions of themselves or of the members of their suite (*familiares,* 239: 1, 2°; 349: 1, 1°).

## Delegated Penitential Jurisdiction for Regulars

Every confessor approved by the Ordinary can validly and licitly hear the confessions of *male* Religious, even exempt ones (novices not excepted 566: 2), both within the monastery or convent, or outside of it, when these have recourse to him for the tranquillity of their conscience (519).

As for the rest, the Constitutions of the various organizations, which order or advise Religious to make their confessions at stated periods (for example, every eight days) and to certain confessors, keep their force (519). In the houses of clerical Religious several confessors are to be appointed, corresponding to the number of Religious (518:1). For lay organizations of men the same regulations hold good in this matter as for those of women (528). For the novices of clerical organizations of men there should be appointed, according to their number, one or more ordinary confessors. Besides these, several other priests should be set apart, to whom the novices may freely have recourse in special cases. Finally, novices are to be granted an extraordinary confessor at least four times a year (556:2).

In order to hear the confessions of *female* Religious validly and licitly all secular and religious priests

(Cardinals alone excepted: 239: 1) *per se* have to be provided with *special* jurisdiction from the local Ordinary (876; 525). (See 520; 521; 524; 527 for the details of this delegation.)

Nevertheless any confessor approved by the local Ordinary to hear the confessions of women, can validly and licitly absolve female Religious (including novices) under the following conditions: (*a*) when the latter have recourse to him in any church or public or semipublic chapel, or generally in any place legitimately set apart for hearing of the confessions of women (522);[5] (*b*) whenever a female Religious who is seriously ill, though not necessarily in danger of death, wishes to go to confession to him (523).

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[5] *"In loco ad audiendas mulierum confessiones legitime destinato"* (Commission for Interpret. of the Code, Nov. 24, 1920, in *Acta Apostolicae Sedis*, 1920, p. 575; *S. C. de Rel.*, July 3, 1916). The regulation of Canon 522: *"in qualibet ecclesia vel oratorio saltem semipublico"* is consequently not to be taken as an absolutely necessary condition for the validity, or even for the licitness, of these confessions.

## Cessation of Delegated Jurisdiction

Delegated penitential jurisdiction, like every other kind of delegated jurisdiction, ceases in the following cases (Canon 207: 1):

1. Through the closing of the period of time, or through the exhausting of the number of cases, for which the delegation was given. (See, however, 207: 2.)

2. Through the recall of delegation on the part of the delegating authority, but only at the moment when the recall is directly communicated to the person delegated.

3. Through death or loss of office on the part of the delegating person, only in case it has been so declared at the time of delegation in some kind of stipulating clause (61).

4. Through a condemnatory or declaratory sentence of excommunication, suspension or interdict on the part of ecclesiastical superiors (2264; 2284; 2275: 2).

When a delegated confessor gives up his diocesan domicile his jurisdiction ceases only then when it is thus stated by the local Ordinary.

## Suppletion of Penitential Jurisdiction

Suppleted jurisdiction is a special and extraordinary kind of delegated jurisdiction. It is not granted permanently to any priest (as is ordinary and common delegated jurisdiction), but only for individual, transitory, acts of jurisdiction, in such wise that it ceases again immediately after such acts.

### CASES OF SUPPLETION

Suppletion takes place in three cases (209):

1. In general misapprehension (*in errore communi*); that is, when there exists in any diocese, parish or other ecclesiastical community a general or almost general invincible erroneous assumption that a priest has jurisdiction when in fact he has none.

The Code no longer takes into consideration a *titulus coloratus* as a condition for certain suppletion. Conscious use of suppleted jurisdiction based upon *error communis*, is, according to some authors, never allowed; according to others (Berardi, Tanquerey), only in case of necessity.

2. When a confessor, after the period of his faculties has run out or the number of cases for which he had faculties has been exhausted, continues to absolve without averting to the fact that he has no faculties (207: 2). This holds good even without *error communis.*

3. In positive and well grounded juridical (theoretic, speculative) or practical doubt (*in dubio positivo et probabili sive iuris sive facti*) as to whether one has jurisdiction or not. (Jurisdiction is called "theoretically doubtful" when its existence depends upon a doubtful law; it is "practically doubtful" when it depends upon a doubtful fact.) The same holds good for *"iurisdictio speculative aut practice probabilis."* In these cases the Church supplies jurisdiction hypothetically; that is, in case the respective confessors actually have no jurisdiction.

According to the common teaching of moralists one may make use of speculatively doubtful jurisdiction even without special reason. This might also be applied to practically probable jurisdiction, because now suppletion is certain and consequently there is no danger of exposing the sacrament to nullity.

## SECOND PART

### Reserved Sins

By a reserved sin we understand one whose absolution an ecclesiastical Superior has reserved to himself. This reservation is accomplished through limitation of the penitential jurisdiction of subordinate persons in reference to the sin under consideration (893: 1, 2°).

Besides the Pope, those who may legitimately reserve the absolution of certain sins to themselves are the following: the Bishop of the diocese (or respectively, an Abbot or Prelate *nullius,* an Apostolic Administrator, Vicar, or Prefect), the Superior General of an exempt clerical organization, and the Abbot of an autonomous monastery (893: 1; 896).

Reservations by local Ordinaries are binding also upon persons without definite domicile or travelers and strangers who happen to be within the territory.

Reserved cases are divided into papal, episcopal, and

those of Regular organizations. Furthermore, reserved cases are divided into those *with* and those *without censure,* according to whether the reserved sin is at the same time connected with a censure impending *ipso facto,* or not. Reservations *without censure* are called *simple reservations.* Cases with impending censure may be reserved: either

1. On account of the sin (*directly* reserved); or
2. On account of the censure (*indirectly* reserved); or
3. On account of both the sin and the censure.

The following chapter treats exclusively of simple and direct reservations.

## Simple and Direct Reserved Cases in Particular

*The Papal Reserved Case.* There is only one sin which is reserved to the Holy See *ratione sui,* and that is falsely accusing an innocent priest before an ecclesiastical judge of the crime of solicitation (894). This sin is at the same time conjoined to an excommunication reserved to the Pope *speciali modo* (2363); consequently it is also reserved *ratione censurae.*

*Episcopal and Regular Reservations.* The Bishop of the diocese and other Ordinaries entitled to make reservations are limited to three or, at the highest, four reserved cases (897, *Instr. S. Off.*, July 13, 1916).

These reservations may be made only in conformity with the prescriptions of the Code, for which 895–899:1, should be consulted. They should be made by the Ordinary only then when they appear to be called for by necessity or utility. The sins thus treated must be offenses particularly grave, external and clearly determined in their ultimate species, and should not have been already joined by general law with some reserved or non-reserved censure (897 *ss.*). Reserved cases are to be brought to the knowledge of the faithful in a suitable manner (899:1).

Pastors and confessors are obliged to keep themselves informed regarding these special reservations which they may have to deal with. In view of the present canonical regulations in this matter, Ordinaries are largely refraining from the practice of reservations.

*Conditions Required to make a Reservation Effective.* In order that a reserved sin may *de facto* be considered and treated as reserved in any given case it must be:

1. An objectively and subjectively grave and external sin, and
2. Materially and formally a sin of the species marked with reservation (897).

Other conditions heretofore insisted upon by some canonists as necessary, such as: the age of puberty, and that the delinquent must have knowledge of the reservation, cannot be considered as required by the Code, where Canons 883–900 cover the whole field of reservation, which must not be confused with that of censures.

*Cessation of Reservation.* Reservation of a sin ceases, so that any simple confessor may absolve therefrom:

1. By confession of the reserved sin in the Sacrament of Penance to a priest authorized to absolve reserved cases, and that even when absolution is deferred or the confession invalid, and *probabiliter* also for an unworthy confession (an unworthy Jubilee confession to a priest authorized only for such confessions must certainly be excepted).

2. *Probabiliter* also by a valid confession to a priest authorized for reserved cases, even when through for-

getfulness the reserved sin is not accused. Of course, in that case the sin unconsciously omitted remains *materia necessaria,* only the reservation ceasing, so that thereafter any confessor may absolve the sin directly.

## Regulations for Absolution in Simple and Direct Reserved Cases

In danger of death any priest, even one not approved, can validly and licitly absolve all reserved cases of whatsoever kind (882).

## Faculties Granted by Canon Law to All Approved Confessors

Any confessor ordinarily approved can absolve all reserved sins in the following cases:

1. *Sick persons,* when they can not leave their place of residence (900: 1).

2. *Bride and groom,* when they go to confession in preparation for marriage.

3. Whenever the proper *superior refuses* to grant the necessary faculty for an individual definite case for which it has been requested (900: 2).

4. Whenever, according to the prudent judgment of the confessor, the proper superior *can not well be approached* for the necessary faculty without *serious disadvantage to the penitent* (as, for example, when the penitent can not omit intended Communion or Mass without injury to his good name, or when he would otherwise have to remain long in the state of mortal sin, and bear this ill; (see 2254:1), or without *endangering the secret* of the confessional.

5. Penitents who are *outside the territory* of the superior making a reservation, even when they have left it with the specific intention of evading the reservation (900: 3), unless the Ordinary of the district they happen to be in has himself likewise reserved the same case.

In the above cases, according to Canon 900, reservation simply ceases. This would seem to include also the papal reservation *falsae denuntiationis,* though in the latter case the conjoined reserved censure must also be taken into consideration.

6. *Reservations of Regulars* in their own organizations can be absolved by any confessor approved by

the local Ordinary (519). This practically does away with Regular reservations.

7. At stopping points on *sea-voyages,* according to the dispositions of Canon 883: 2, detailed on p. 14.

8. *In dubio iuris vel facti* concerning the reservation itself, or concerning conditions necessary to its actual incurrence (209; see also p. 19, No. 3).

## Faculties Granted by Canon Law to Pastors and Missionaries

Besides by Canons Penitentiaries (899: 2), all cases reserved to the Ordinaries can be absolved *ex ipso iure:* (*a*) by *pastors,* quasi-pastors, and by all considered in Canon Law as the equivalent of pastors (see p. 5, No. 3) during the whole time available to the penitent for making his Easter duty (899: 3); (*b*) by *missionaries* during the time of a mission.

## Practical Remarks

Any confessor who is not empowered to absolve from reserved cases must in this matter either refer the penitent to a properly authorized confessor, or

himself ask for authorization (forms for such application will be found in the Appendix). Absolution from reserved sins is imparted through the ordinary absolution formula. (For the form of absolution for a conjoined censure, see p. 49.)

Other faculties than the above mentioned may be granted in diocesan and other particular legislation, and confessors should be acquainted with such provisions. Habitual faculties in this matter are not to be too readily granted (899: 1). Deans are frequently thus empowered (899: 2). In exempt clerical religious communities the official confessors are also to be empowered for Regular reserved cases (518: 1).

# THIRD PART

## Faculties for Absolving from Censures

*Censures and Their Divisions.* A censure is an ecclesiastical punishment imposed either by the law itself or by an ecclesiastical judge, by which a baptized contumacious delinquent is deprived of certain spiritual benefits, or of benefits connected with spiritual goods, until such time as he shall have emended himself and been absolved (2241 : 1).

Where vindictive punishments have as their main object atonement for an offense committed, censures are ordained primarily for the emendation of the guilty person. They are *medicinal punishments* (2216); hence the connection of their absolution with betterment, with a receding from *contumacia.*

The following are the common classifications of censures:

1. Censures *latae sententiae,* and such as are *ferendae sententiae.* A *censura latae sententiae* is one that, either by law itself or by decree of an ecclesiastical superior, has been so conjoined with some specific offense that it automatically comes into effect upon commission of that offense. A censure is called *ferendae sententiae* when, though impending for an offense, it has nevertheless still to be actually inflicted by an ecclesiastical superior or judge before it will take effect (2217: 1, 2°).

2. Censures *a iure,* and such as are *ab homine.* The former are threatened in punitive legislation, and may be either *latae* or *ferendae sententiae.* The latter are imposed, not by the law, but by order of a superior or by judgment of an ecclesiastical court (2217: 1, 3°).

3. Censures may be *reserved* or *not reserved,* according as the faculty to absolve therefrom is, or is not, denied persons ordinarily having absolution faculties, and reserved to superiors (2245).

Specifically, censures are divided into *excommunication, interdict,* and *suspension.*

*Excommunication* consists in excluding a person from the community of the faithful, together with depriving him of all goods and rights whose disposition or administration is entrusted to the Church (2257-2267).

If civil intercourse and dealings are permitted with excommunicated persons, they are called *excommunicati tolerati* (2258:1). But if such persons have to be avoided even in civil intercourse (except in so far as relatives, servants or employees, or subjects may be excused) they are *excommunicati vitandi* (2258:1; 2267). To the latter class belong (*a*) persons doing violence to the person of the Pope (2343:1, 1°), and (*b*) persons excommunicated by the Pope *by name,* when the excommunication has been published with the express command that they be avoided (2258:2).

*Interdict* consists in the prohibition for certain persons (*interdictum personale*) or for certain places (*interdictum locale*), of the celebration of, or assistance at, divine service, reception of the sacraments and sacramentals, or Christian burial, all of which may be prohibited in whole or in part (2268-2277).

*Suspension* consists in the prohibition for a cleric of the exercise of the powers of his office, whether of Orders or of jurisdiction, or in depriving a cleric of

the income of his benefice, or of both these punishments either in whole or in part (2278-2380).

Whilst excommunication is *always* a *poena medicinalis,* suspension and interdict may at times be vindictive punishments (see 2255:2; 2286; 2289).

## Conditions Required for Incurring a Censure

On the part of the *delinquent:* he must have reached the age of *puberty,* the 14th year for males, the 12th for females, (88: 2; 2230).

On the part of the *offense:* it must be (*a*) *external;* that is, externally recognizable, even if done in secret (2242: 1; 2195: 1); (*b*) *grave;* that is, objectively (2242: 1) and subjectively (2218: 2) mortally sinful; (*c*) *complete;* that is, an act materially[1] and formally[2] perfect in the species denounced by the law or the superior (2228; 2242: 1), and lastly (*d*) *contuma-*

[1] Thus, if the censure is imposed for the actual commission of the sin, it is not incurred by a mere attempt to commit the sin.

[2] Consequently the delinquent must recognize the specific malice of his act at least *in confuso.* This holds good always *pro foro interno.* But in dealing with a case *in foro externo,* in ordinary government and in judicial procedure, this recognition of specific malice is always presumed until the contrary is proved (16:2).

*ciously committed* in deliberate opposition to the law or the superior (2242: 1).

A person is considered *contumax* (*a*) in censures *ferendae sententiae,* when, despite the admonitions of ecclesiastical superiors, he will not desist from his offense, or refuses to do penance or to make good an injury done, or to repair a scandal (2242:2; 2233:2); in censures *latae sententiae* when he oversteps the law or order without legitimate excuse (2242:2).

*Coöperation* in an offense upon which an ecclesiastical punishment is set (also for a *delictum impuberis* —2230) makes the coöperating person likewise subject to the punishment (unless the law specifies otherwise), under the following conditions (2231; 2209: 1-3): (*a*) physical coöperation agreed upon by the parties; (*b*) coöperation as a necessary assistant; (*c*) coöperation by command or seduction or otherwise, when the offense could not be committed without such coöperation.

## Subjective Reasons Excusing from Incurrence of Censures "Latae Sententiae"

If the wording of the law *demands* expressly *full knowledge and deliberation* (as by the terms: *"praesumpserit, ausus fuerit, scienter egerit"*), then any cause diminishing responsibility, whether bearing upon the intellect or upon the will, may serve to excuse (2229: 2).

Such factors are enumerated in Canons 2001–2006; they would include subnormal reasoning power, drunkenness, ignorance (even *ignorantia crassa*), lack of attention to, or misunderstanding of, the law or punishment; moreover, negligence, even culpable, unforeseen accident, physical coercion, duress, grave damage or loss, spontaneous upsurging of passion, forgetfulness.

If full knowledge and deliberation are not insisted on by the law as presupposed, then the only causes directly excusing are (*a*) *ignorance of the* law or of the punishment, whether culpable or not, with the exception of *ignorantia crassa,* wherein one should and easily could have the proper knowledge (see 2229: 3,

1°); (*b*) *grave fear,* except where the offense would tend to contempt of the faith or of ecclesiastical authority or to the public injury of souls (2229: 3, 3°).

Other factors enumerated above may indirectly have excusing force in this second group only when they make the *sin venial* (2229:3, 2°).

*Intentional ignorance* (*ignorantia affectata*) of either the law or the punishment, sanction (2229:1), as also *ignorance of the reservation, never excuses* from the incurring of censures. *Ignorantia affectata* may be assimilated to a doubtful conscience, for one can not intentionally remain in ignorance except where one already has doubt.

## Actualization of Censures "Latae Sententiae"

Every punishment *latae sententiae,* whether censure or vindictive sanction, is binding upon a consciously guilty delinquent from the moment he has committed the offense, both in conscience and in the external forum (2232: 1). But before a judicial declaration of his having incurred the punishment he is excused from observing it in case he can not do so without grave injury to his good name.

The same person may draw upon himself the same censure from different sources, whereby the *censures* for him are *multiplied* (2244:2). This will happen (*a*) when divers offenses are committed, by the identical action or by distinct actions, and each offense has the same censure attached; (*b*) when the same offense is repeated; (*c*) when the same offense is punished by different superiors with the same censure.

## Reservation of Censures

1. Censures *ab homine* are *always* reserved to the inflicting person, his superior, successor, or duly authorized delegate (2245: 2). Censures *a iure* may or may not be reserved.

2. Censures reserved *a iure* are reserved either to the Ordinary or to the Pope. In the latter case they may be reserved either *simpliciter, speciali modo,* or *specialissimo modo* (2245: 2, 3).

3. Censures *latae sententiae* are reserved *only when* the law or the command expressly declares this. If there is doubt about the case, then *"in dubio sive iuris sive facti reservatio non urget"* (2245: 4).

4. Reservation of a censure which excludes from the sacraments (as excommunication and personal in-

terdict) brings with it also the *indirect reservation of the sin* to which the censure has been attached as a punishment. But when a person is excused or absolved from the censure, the indirect reservation of the sin likewise ceases (2246: 3).

## Excommunications "Latae Sententiae"

### I. EXCOMMUNICATIONS RESERVED TO THE POPE

*A. "Specialissimo modo"* are incurred by

1. Those who cast away the consecrated species, or who take them away or keep them for an evil purpose (2320).

2. Those who lay violent hand on the person of the Holy Father (2343: 1). These are *ipso facto vitandi.*

3. Those who absolve, or feign to absolve, a *complex in peccato turpi* (2367: 1).

This censure takes effect even when through the confessor's suggestion the penitent does not accuse himself of the *peccatum complicitatis,* even though it still be *materia necessaria;* likewise in danger of death, when absolution is imparted without circumstantial necessity—though then the absolution is valid.

4. Those who dare to violate the seal of the confessional directly (2369: 1). This holds only for confessors, and not for interpreters, etc.

*B. "Speciali modo"* are incurred by

1. Apostates, heretics, and schismatics (2314: 1).

*Apostates* are baptized persons who have completely given up the Christian faith (1325:2). *Heretics* are baptized persons who call themselves Christians, yet deny or doubt some article of faith. This denial or doubt, however, must be externally manifested, which holds good also for schismatics and apostates. *Suspected of heresy* (and subject to the same censure as heretics) are those who despite warning and punishment do not remove the cause of suspicion and pass half a year without emendation. Such are *de iure* (*a*) those who consciously aid the spread of heresy, or are guilty of *communicatio activa in sacris* with heretics (1258; 2316); (*b*) the persons mentioned in the first excommunication of group "A"; in the fourth of the present group "B"; and in the second excommunication of the group reserved to the Ordinary; (*c*) those who knowingly confer or receive Holy Orders or other sacraments simoniacally (2371); (*d*) those who persist a year under censure of excommunication (2340:1). *Schismatics* are baptized persons who refuse to acknowledge the headship of the Pope, or to be in communion with the members of the Church (1325:2).

This censure is reserved to the Pope for the internal forum alone. *Pro foro externo* juridical abjuration before the

Ordinary or his delegate and at least two witnesses, is sufficient, and thereupon any confessor can absolve from the sin (2314:2).

2. Publishers of books by apostates, heretics, or schismatics, in which apostasy, heresy or schism is defended. The books must actually have appeared in trade. Likewise persons who defend or knowingly without permission read or keep the above mentioned books, or others forbidden by papal decree which mentions them by title (and *probabiliter* also *"sub poena excommunicationis"*).

Prohibition by decree of a Congregation would not suffice; there must be a document of the Pope, such as an encyclical, bull, or brief (2318:1).

3. Persons not priests who feign to say Mass or hear confessions (2322).

4. Persons who appeal from acts of the Pope to a General Council (2332).

5. Those who have recourse to the civil power in order to hinder communications or orders of the Apostolic See or of its legates; those who directly or indirectly impede the publication or execution of such

communications or orders; those who gravely injure or threaten any one on their account (2333).

6. Those who pass laws or decrees against the liberty or rights of the Church (2334; 1°).

7. Those who impede the exercise of ecclesiastical jurisdiction by having recourse for this purpose to any secular power (2334: 2°).

8. Whosoever dares, without permission of the Apostolic See, to cite before a lay judge a Cardinal, a Papal Legate, a higher official of the Roman Curia, or his own Ordinary (2341).

9. Whosoever lays violent hands upon a Cardinal, a Papal Legate, or a Bishop (2343: 2, 3).

10. Whosoever seizes or holds in possession goods or rights of the Roman Church (2345).

11. Whosoever falsifies or forges papal writings, or knowingly makes use of such forged writings (2360).

12. Whosoever personally or through others falsely accuses a confessor of the crime of solicitation, before an ecclesiastical superior (2363).

*C. "Simpliciter"* are incurred by

1. Trafficking in indulgences (2327).

2. Joining the Freemasons, or similar (secret) societies that plot against the Church or against legitimate civil authority (2335).

Other organizations of this type are, for example, the Carbonari, Anarchists and Nihilists, but not the ordinary run of Socialists, as these have an open organization.

3. Knowingly absolving from an excommunication reserved to the Pope *specialissime* or *specialiter* without having the necessary faculties (2338: 1.)

4. Aiding or abetting an *excommunicatus vitandus* in his crime; for clerics also, knowingly and freely communicating *in divinis* with such a person, or permitting him to be present at divine services (2338: 2).

5. Citing a Bishop, Abbot, Prelate *nullius,* or the Superior General of a papally-approved religious organization before a lay tribunal, without permission of the Apostolic See (2341).

6. Violating the cloister of Regular organizations of solemn vows (2342).

This censure is incurred by (*a*) persons of either sex who

without proper permission enter the cloister of female Religious of solemn vows; (*b*) whoever brings in such persons or allows them to enter; (*c*) religious women who leave papal enclosure illegitimately (see 601); (*d*) female persons entering the cloister of male religious; (*e*) superiors or others that bring in such persons or allow them to enter the enclosure.

7. Expropriation of ecclesiastical goods of any kind, as well as subsequent acquisition thereof, or preventing the fruit or income from going to those entitled thereto (2346).

The goods must be returned, or the hindrance cease, before absolution can be received.

8. Duelling (2351) and having any part therein.

This includes the principals themselves; those who challenge or accept a challenge; those that assist at a duel, or favor it, or even witness it *de industria* (not simply by accident or out of curiosity); persons in proper authoritative position who permit a duel or do not strive to prevent it as best they can.

9. Attempted marriage (even if only civil) by or with clerics in major orders or Religious of solemn vows (2388: 1).

10. Simony in acquiring or conferring ecclesiastical offices, benefices, or dignities (2392).

11. Removing, destroying, concealing, or substantially altering documents of any episcopal curia (2405).

### II. EXCOMMUNICATIONS RESERVED TO THE ORDINARY

These are incurred by

1. Catholics who give or renew matrimonial consent before a non-Catholic religious official as such (2319).

2. Catholics who at the time of marriage explicitly or tacitly agree to have all or some of their children receive a non-Catholic education; and Catholics who knowingly and intentionally have their children baptized by a non-Catholic religious official; and likewise Catholic parents or guardians who knowingly have children subject to them brought up or instructed in a non-Catholic religion (2319).

3. Those who make, or knowingly sell, distribute, or expose for public veneration false relics (2326).

4. Those that lay violent hand on a cleric below the rank of Bishop, or upon a Regular of either sex (including novices) (2343: 4).

5. Those procuring abortion *effectu sequuto,* the mother herself not excepted (2350).

6. Professed of perpetual vows who apostatize from their religious organization (2385; compare with 644).

This may be incurred by illegitimately leaving the cloister with the object of not returning, or, after having legitimately left, not returning, with the object of withdrawing from religious obedience. This object is presumed by law when such a person does not return within a month, or at least manifest his willingness to return. For exempt religious organizations of clerics this censure is reserved to the higher Superiors; for others, to the Ordinary of the place where the *apostata* is staying.

7. Professed of perpetual simple vows who contract marriage (even civilly) as well as their consorts (2388: 2).

### III. EXCOMMUNICATIONS RESERVED TO NO ONE

These are incurred by

1. Publishers who without proper permission edit or print texts of the Scriptures, or notes and commentaries thereon (2318).

2. Those who by command or coercion force the ecclesiastical burial of infidels, notorious apostates, heretics, schismatics, or persons excommunicated by name or interdicted (2339; see also 1240: 1).

3. Those who alienate ecclesiastical property knowingly without papal permission when the latter is required (2347; compare with 534: 1); this applies also to the persons accepting such property, or agreeing to its alienation.

4. Those who force a person in any manner to enter the clerical or religious state, or to take religious vows (even temporal: 2352).

5. Penitents who knowingly neglect to denounce a *confessarius sollicitans* to proper authorities within one month (2368: 2). These can be absolved only after they have complied with their obligation, or at least seriously promised to do so.

### Interdicts "Latae Sententiae"

An *interdict reserved to the Pope speciali modo* is incurred by universities, colleges, chapters, and other moral persons who appeal from dispositions of the Pope to a General Council (2332).

An *interdict "ab ingressu ecclesiae"* [3] *reserved to the Ordinary* is incurred by the following offenses:

1. Spontaneously according infidels, notorious apostates, heretics, schismatics, and persons excommunicated by name, and interdicted persons, ecclesiastical burial (2339).

2. Knowingly celebrating, or permitting to celebrate, divine services in interdicted places, as well as knowingly permitting clerics excommunicated by name, or suspended, or interdicted, after a declaratory or condemnatory sentence, to exercise functions of Orders forbidden by the censure (2338: 3).[4]

A *personal interdict* (which is not a censure, but a vindictive penalty) is incurred by him who has given occasion for fulminating an interdict upon a place, a community, or a collegiate body (2338:4). For the effects of a personal interdict consult Canon 2275.

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[3] This means that the person thus interdicted is prohibited to celebrate in a church, or to assist at divine services, or to receive ecclesiastical burial.

[4] The latter is no censure, but rather a *poena vindicativa,* since the interdict holds good *ad beneplacitum superioris* (see 2291:2°).

### Suspensions "Latae Sententiae"

1. Reserved to the Pope:

(*a*) *Suspensio totalis* (*ab officio et beneficio*) of clerics who knowingly confer or receive Orders or any other sacrament simoniacally (2371).

(*b*) *Suspensio a suscepto ordine* of persons who maliciously receive Orders without dimissorial letters, or with false letters, or before the canonical age, or *per saltum* (2374).

(*c*) *Suspensio totalis* of a Religious in major Orders whose profession has been declared null on account of deception used by him in making it (2387).[5]

2. Suspension *ab officio* reserved to the Ordinary is incurred by clerics who, without permission of the local Ordinary, dare to cite a simple cleric (one below

[5] This also is a *pœna vindicativa* and not a censure, because it remains effective till the Holy See thinks fit to remove it (2387; see also 2298; 2°).

the rank of Bishop or Superior General) or a religious before a lay tribunal (2341).

3. *Suspensio totalis* reserved to the higher *Regular Superiors* is incurred by a *religiosus fugitivus* in major Orders until such time as he returns (2386).

A fugitive Religious is one who leaves the cloister without the permission of his superiors, yet with the intention of returning, which latter is wanting in an apostate religious (644:3).

4. Suspensions *nemini reservatae* are incurred by the following, among others:

(*a*) By priests who knowingly hear confessions without having the required jurisdiction—*suspensio a divinis.*

(*b*) By confessors who knowingly absolve reserved cases without proper faculties—*suspensio ab audiendis confessionibus* (2366).

(*c*) By Regular Superiors who, contrary to the provisions of the law (965-967), deliberately send their subjects to a Bishop other than the diocesan for ordination

(2410). This last is not a censure, but a *poena vindicativa.*

Other suspensions, having to do chiefly with illegal ordination, are provided in Canons 2370, 2372, 2373, 2400, 2402, 2409.

## Absolution of Censures

*General Principles.* If one has incurred a censure he can be freed therefrom only through legitimate absolution (2248: 1; 2236: 1). If he has incurred a censure that hinders the reception of the sacraments, he *can not be validly absolved from his sins* unless he has previously been freed from the censure (2250: 2). The absolution of a censure *can not be refused* whenever the guilty person has given up his evil disposition (*contumacia*) in the matter (2248: 2); that is, when he sincerely regrets his offense and makes good any scandal or damage caused, or at least earnestly promises reparation (2242: 3).

An absolution from censure *in foro externo* holds good also in the realm of conscience; but not conversely. However, one who has been absolved *in foro*

*interno* from a censure may conduct himself as absolved in acts of the external realm also as long as there is no scandal given thereby and the ecclesiastical superiors do not object (2251).

*Formula for Absolution.* The form contained in the Ritual, given immediately before the sacramental absolution, namely: *"Dominus noster Iesus Christus,"* etc., is to be used in the absolution from censures *in foro sacramentali* (2250: 3). Outside of the latter, absolution from censure may be imparted by any convenient and fitting form; such are given in the *Rituale Romanum,* Tit. III, Cap. 3, 5.

Be it noted that a person who has incurred *several* censures may be absolved from one of them without at the same time being released from the others (2249:1). In order to be absolved from *all* censures incurred, the guilty person must make known *all* his censures to the one absolving. A *general absolution* is not effective for censures concealed *mala fide,* although it is valid for such as are overlooked *bona fide,* except for censures reserved to the Pope *specialissimo modo* (2249:2).

## Faculties to Absolve Relative to Censures

Censures that are not reserved may be absolved by any confessor in the Sacrament of Penance (2253: 1°).

*Reserved censures* are validly absolved by any confessor if he is not acquainted with the reservation, except in the case of censures reserved *ab homine* and of those reserved to the Pope *specialissimo modo* (2247: 3).

Censures reserved *in a particular district* may be absolved by any confessor *outside that district,* and that even when the guilty person has gone outside the particular district *in fraudem reservationis* (2247:2).

*In Casibus Urgentioribus* any confessor can absolve from all censures *reserved in any way whatsoever,* in the Sacrament of Penance, whilst at the same time placing upon the penitent the obligation of *recourse* (2254:1). A case may be considered urgent (1) when the censure incurred can not be lived up to externally without danger of grave scandal or grave injury to

reputation;[6] (2) when the penitent finds it hard to continue in the state of mortal sin until such time as the proper superior can impart either the absolution or the necessary faculties.[7]

## Obligation of Recourse

After absolution has been received from certain censures, there may still remain an obligation to have recourse to the proper superior, under penalty of falling back into the same censure. This obligation is incurred in the following cases:

1. By persons who whilst in danger of death have received absolution from a priest not properly authorized for a censure reserved to the Pope *specialissimo modo*. Such persons must, not later than a month after their restoration to health, get in touch with the Sacred Penitentiary, or with any other person delegated with the necessary faculties, and receive and

[6] This danger can easily occur in connection with an obligation of celebrating Mass or receiving Holy Communion.

[7] This case may occur frequently, for to have to wait even one or two days may be quite onerous to the penitent.

conform himself to the usual *mandata,* advice and penance (2252; see also 2251 and 2254: 1).

2. By any person who whilst in danger of death has been absolved from a *censura ab homine,* as above. He is obliged to have recourse to the person who has inflicted the censure.

3. By any person who *under urgent circumstances* (*casus urgentior*) has been absolved by a confessor not specially authorized, from any censure reserved to either the Pope or the Ordinary. The obligation of recourse in this case is to the Sacred Penitentiary, or the Ordinary, or any ecclesiastical superior (*e. g.,* an Apostolic Delegate), but not to any simply delegated person (2254: 1).

Recourse may be had either personally or in writing, by the censured party himself or through an intermediary. Practically it is generally done through the confessor. For ordinary lay persons find the composition and sending of the proper letter (and the Roman Curia is prepared to correspond in Latin, Italian, English, German, French, Spanish, and Portugese) difficult enough; they could scarcely be expected to grasp the technicalities, clauses and instructions of the rescript received in return.

The obligation of recourse *no longer binds* when it

becomes morally impossible in some extraordinary case (2254: 3), as when it can be undertaken only at the risk of grave injury to character (2254: 1).

This may happen when confidential correspondence with Rome or with the Bishop or other superior is jeopardized by circumstances; also when the penitent himself can not have recourse, and still will be unable to get into communication with his confessor (who might make recourse for him) in order to receive the *mandata,* because he has met the latter only transitorily, on occasion of a mission, for example.

In such a case the confessor can absolve from all reserved censures (with the exception of the one upon *absolutio complicis*[8]) without obliging him to recourse. At the same time he is to impose the duties and penance provided in the ordinary course of law. Particularly is the penitent to be obliged, under penalty of reincurring the censure, to perform a properly proportioned penance within a definitely assigned period, and, whenever it is called for, to make satisfaction for damage or scandal (2254:3).

Even after a penitent has received absolution from censure conjoined to the obligation of recourse, and

[8] This exception is grounded upon the particular heinousness of the offense, on one part, and on the other upon the fact that the delinquent priest may himself easily take care of the matter of recourse and receive the *mandata* in such manner that they will not need execution by a third person (*per rescriptum in forma gratiosa,* Holy Office, June 3, 1899).

even after recourse itself has been begun, he is always at liberty to resubmit his case to a specially authorized confessor and to request from the latter absolution from the sin with censure attached. If it is granted he must abide by the stipulations of this confessor, and later, different *mandata* received from a superior through the recourse, need not then be followed (2254: 2).

### Practical Procedure

When a penitent confesses a sin that has a reserved censure attached, the confessor must first of all assure himself that the person has *actually incurred the censure;* that is, he must determine whether all the conditions required by law for the coming into effect of the censure both on the part of the delinquent himself and on the part of the offense, have been fulfilled (see pp. 31, 32 above). Moreover, he must examine whether there may not be subjective grounds for excuse, such as ignorance of the law, and particularly of the punishment (see pp. 33, 34 above).

It is on the latter account that *lay persons relatively seldom incur censures,* because they are not in duty bound to

be acquainted with the ecclesiastical penal code; generally speaking, they must have received some warning. It is quite different for clerics, who are by their very position obliged to know something of censures; with them ignorance may easily be *crassa* or even *affectata,* which does not excuse.

If, upon examination, it is clear that the penitent has actually incurred the censure, then in turn the confessor must determine *whether he himself is authorized under any title* (general law or diocesan prescription or personal delegation) to grant absolution in the case.

If he himself can absolve without obliging to recourse to higher authorities, then the absolution is to be preceded by proper warnings, and a proportionate penance imposed.

If he can absolve only by at the same time imposing the obligation of recourse, the penitent is to be instructed in this regard. Practically the confessor will generally have to offer himself as mediator for the recourse.[9]

[9] The confessor as intermediary for recourse has to be careful of the seal of confession. Only fictitious names are to be used. A form for recourse is given in the Appendix.

If he can not absolve under the circumstances, he must either direct the penitent to some attainable person who has the requisite authority, or he must ask him to wait until such time as proper faculties can be obtained from the Sacred Penitentiary or from the Ordinary.[10]

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[10] To the province of the Ordinary belong (*a*) all censures reserved to him; (*b*) all censures reserved to the Pope *simpliciter* when the cases are occult (2237:2); (*c*) under the latter condition frequently also censures reserved to the Pope *speciali modo*. In fact, so long as there is no danger of violating the seal, it is generally convenient to appeal to the Ordinary for the mediation of recourse in all cases of censures reserved to the Pope.

## SECOND SECTION

## FACULTIES OF PASTORS AND CONFESSORS FOR DISPENSATION

IN REGARD TO

I. THE PRECEPTS OF THE CHURCH
II. VOWS AND PROMISSORY OATHS
III. MATRIMONIAL IMPEDIMENTS
IV. IRREGULARITIES
V. VINDICTIVE PENALTIES

# FIRST PART

## Faculties for Dispensation in Regard to the Precepts of the Church

### Obligation of Hearing Mass, and Prohibition of Work on Sundays and Holy Days

Besides all the Sundays of the year, the following feasts are holy days of obligation for the universal Church: Christmas, New Year's, Epiphany, the Ascension, Corpus Christi, the Immaculate Conception and the Assumption of Our Lady, the Feasts of St. Joseph (March 19th), Sts. Peter and Paul, and All Saints. Of the above list the Feasts of Epiphany, Corpus Christi, St. Joseph, Sts. Peter and Paul are not of obligation in the United States, where the list of the Third Council of Baltimore is still to be followed.

Patronal feasts are not holy days of obligation (1247:2); the Ordinary may transfer their external observance to the following Sunday. If in some country or territory any of

the above holy days are legitimately suppressed or transferred. no change is to be made in that regard without consultation of the Holy See, to which alone is reserved the selection, transfer, and suppression of feasts for the universal Church (1244).

Other holy days of obligation for particular territories can be instituted (*a*) by special apostolic indult obtained after the promulgation of the Code (particular indults or customs in this matter dating from before the Code no longer have force);[1] (*b*) on the base of a concordat or similar agreement between the Church and divers States (see Canon 3); (*c*) in transitory instances, by order of the local Ordinary, who is empowered to appoint such days as well as abstinence or fast days for his diocese or for sections thereof *per modum actus* (1244: 2).

The duty of "keeping holy" Sundays and feast days is binding upon all the faithful who have attained the use of reason, after their seventh year of age (12), and implies a double obligation:

1. The hearing of Mass, or celebration thereof. This obligation may be satisfied by hearing one Mass

[1] Commission for Interpretation of the Code, Feb. 17, 1918, *ad III.*

in any church and any public or semipublic chapel, or in any private mortuary chapel [2] (but in other private oratories only by papal privilege), or beneath the open sky (1249).

2. Abstention from certain acts, namely: (*a*) servile works; (*b*) forensic acts, such as trials; (*c*) public mercantile transactions, such as marketing and general commercial buying and selling (1248). The acts mentioned in the last group may be permitted either by legitimate custom or by special indults.

*Faculties for Dispensation* in above matters are granted by law to *pastors,* who in individual cases and for a just reason may exempt persons or families of their parish anywhere, or strangers within their parish. They can not dispense the parish as a whole. The above faculties extend both to the hearing of Mass and the prohibition of work, but can not be applied habitually, although their application can be repeated so long as the *iusta causa* persists.[3] Superiors of ex-

[2] By these are meant not undertakers' parlors or "chapels," but private oratories erected in a cemetery by persons as mausoleums for their burial (1190).

[3] It is quite doubtful whether pastors can delegate these faculties to others under the provisions of Canon 199:1.

empt Regular organizations have in regard to their subjects the same faculties as pastors (1245).

### Precept of Fasting and Abstinence

All Fridays of the year outside of Lent are, of themselves, days of *abstinence alone.* Days of both *fast and abstinence* are the following: Ash Wednesday, Fridays and Saturdays of Lent (till noon only on Holy Saturday), Ember Days, and the vigils of Pentecost, Assumption, All Saints', and Christmas. Days of *fast without obligation of abstinence* are all the days of Lent not above enumerated, except Sundays.[4]

Particular indults in these matters granted to any nation or group, or Ordinaries, remain in force until they run out or are revoked (1253).

If a day of fast or abstinence happens to fall upon a Sunday, the obligation simply ceases; the same holds good for holy days of obligation except when they occur within

[4] An extraordinary fast is prescribed on the day preceding the consecration of a church, only for the consecrating Bishop and for those who, as patrons, are having the church consecrated (1166:2; see also the *Pontificale Romanum*).

Lent.[5] Even when a vigil is liturgically anticipated, there is no transference of the fast.[6] If, however, a holyday of obligation in the universal Church is legitimately suppressed or transferred in some district, it has no effect upon the obligation of fast or abstinence (Commission for Interpretation of the Code, Feb. 17, 1918, *ad I*).

Other, particular, days of fast or abstinence may obtain (*a*) in transitory instances by order of the Ordinary (1244: 2); (*b*) on the base of a vow of a juristic person (diocese, parish, etc.); (*c*) on the ground of rules or constitutions of religious organizations (1253).

The precept of *abstinence* obliges all the faithful who have arrived at the use of reason to do without meat or meat juice (*ius ex carne,* 1250) at stated periods after their seventh year of age (1245: 1; 12). The precept of *fasting* allows the faithful who have completed their 21st year of age and not yet begun their 60th (1245: 2) to take but one full meal a day

[5] On holy days in Lent the fast persists (Commission for Interpretation of the Code, Nov. 24, 1920, *ad II; Acta Apostolicae Sedis* 1920, p. 576).

[6] Thus, should the feast of All Saints fall upon Monday, the vigil is liturgically anticipated on the previous Saturday, but the precept of fasting ceases nevertheless.

at the times appointed (1251:1). Besides this full meal, however, a slight repast is allowed on the occasion of the two other customary meals, whereat in respect to quantity and quality the legitimate customs of the country are to be followed.

*Faculties for Dispensation* are by law granted to *pastors* whereby they can, in individual cases and for particular persons or families, dispense their parishioners anywhere, and strangers within their parochial territory, from the precepts of fast or abstinence, or both (1245:1). Superiors of exempt Regular organizations of clerics have the same faculties in regard to their subjects (1245:3).

Confessors have in these matters no faculties as by law granted, though they are frequently delegated for individual cases of their penitents. Further dispensations than the above have to be sought of the Congregation of the Council (250:2) or of the Ordinary.[7]

[7] The diocesan Lenten regulations should be consulted for details. Applications for further dispensation are best made to the Ordinary, as he is generally empowered with special delegation, and besides has ordinary faculties to dispense his diocese or parts thereof from this precept on account of any great concourse of people, on religious or civic occasions, or because of epidemic disease (1245:2). Religious can take advantage of dis-

### Easter Communion

According to Canon Law, the season within which every one of the faithful who has arrived at the use of reason must receive Holy Communion (859: 1) worthily (861) extends from Palm Sunday to Low Sunday (the Sunday after Easter) inclusively (859: 2). However, the local Ordinaries are empowered, according to the needs of persons and places, to extend further, for individuals or for all, the season for this purpose. It is, however, not to begin before Laetare Sunday (the fourth of Lent) or to go beyond Trinity Sunday.

Whoever has, through his own fault or otherwise, not received Holy Communion within the prescribed time, is obliged to make good his omission, because he is still bound by the general precept of yearly Communion (Lehmkuhl I, 1453; Génicot, Noldin), which is probably binding until the next civil New Year.

Every *pastor* and *approved confessor*[8] is authorized to permit his penitents to prorogue the reception of

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pensations of the Ordinary whenever their vows or rules do not oblige them beyond the ordinary fasting regulations of the Church.

Easter Communion temporarily beyond the legal period, when there exists a reasonable cause therefor (859: 1).

Reasonable causes in this matter would be: the necessity of putting off absolution on account of doubtful requisite dispositions; necessity of repairing scandal; irremovable hindrance to Communion, such as a trip that can not be put off; impossibility of receiving absolution except from a confessor to whom one can not go to confession without at least great embarrassment.

## Communion Fast

The reception of Holy Communion must be preceded by an absolute fast, from midnight on, except in case of danger of death, or when there exists the necessity of keeping the Sacred Species from profanation, by consuming them, or when the essence of Mass, already begun, has to be completed (858: 1).

For determining the midnight hour in this matter, one is not bound to the local time, but can make use of the astronomical, civic, legal, or extraordinarily adopted (such as "daylight saving") time system (33:1). There is, moreover,

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[8] *"Proprius sacerdos"* has generally been taken to mean the confessor, which interpretation is supported by Canon 6, 2°.

no obligation of law to anticipate midnight with the fast when Holy Communion is to be received shortly after midnight, as may happen at Christmas, etc.

*Grant of the Law for Sick Persons.* Those who have been bound by serious illness for a month, and are without hope of speedily recovering their health, may, upon the advice of their confessor, receive Holy Communion once or twice a week, even if they have since midnight taken some medicine, or some drink or nourishment in liquid form (858: 2).

Such patients need not necessarily be *continually* confined to bed (S. Cong. Council, March 25, 1907). However, where persons, although ill, are able to be up and about sufficiently to leave the house, this privilege can not be used, even though they find it difficult or impossible to receive Holy Communion fasting or in church. This may frequently be the case with persons afflicted with some heart trouble. For such a special indult may be requested from the S. Congr. of Sacraments.

In this connection it is well to remember that Holy Communion may be administered as Viaticum, consequently, without obligation of fast, more than once, on different days, so long as the danger of death continues (864:3).

## SECOND PART

### Faculties for Dispensation in Regard to Vows and Promissory Oaths

*A Vow* is a promise made freely and deliberately to God to do some good that is possible and better than its opposite (1307: 1). Vows are distinguished into *personal,* which oblige to some personal *action* on the part of the one promising; and *real,* whereby a thing (such as alms) is promised to God. These two kinds may be combined to form a *mixed* vow (1308: 4). *Private* vows are such as are taken when the Church has no part in the making of the promise. In *public* vows the promise is received by some ecclesiastical superior in the name of the Church; if this is done with special authority or solemnity the vows are called *solemn;* otherwise, like all private vows, they are *simple* (1308: 1, 2). Vows, moreover, are

*reserved* when only the Pope or some other duly authorized person can dispense therefrom (1308: 3).

Two private vows are reserved to the Holy See: (1) the vow of perpetual and perfect chastity,[1] and (2) the vow to enter a religious organization having solemn vows (1309; 488:2)—provided that such a vow is taken unconditionally and after the completed eighteenth year of age.

*An Oath* is a calling upon God as witness of one's truthfulness (1316: 1) in a declaration (*iuramentum assertorium*) or a promise (*iuramentum promissorium*). In the latter case, which alone is here considered, the person swearing is bound to what he has promised, *ex titulo religionis* (1317: 1), be it a resolution, a simple promise, a contractual promise, or a vow.

Reserved to the Holy See is a promise made under oath *in favor of another* who insists upon its fulfillment (1320).

[1] This would not include, for example, the vow never to marry, or of conjugal continence, or a vow of perfect chastity for but a time only.

## Power of Irritation

By *Irritation* of a vow or promissory oath is understood its complete and perpetual voidance by any person who has dominative power over the will of the one vowing or swearing (1312: 1; 1320). To be licit on the part of the voiding person there must be a just cause.

Since Religious Superiors have *potestas dominativa* (501: 1) over the professed subject to them by virtue of the vow of obedience, they possess also the power of making void private vows or promissory oaths taken by the latter after their profession. Any vows taken before profession are considered suspended during the period that a professed remains a member of his organization (1315).

Pastors and confessors, as such, have no power of irritation, not having *potestas dominativa*.

The father (or his legitimate representative, as a guardian) can void vows or promissory oaths of his children taken by them before the age of puberty and not afterwards renewed; and the husband has the same power in regard to vows or promissory oaths taken by his wife after their marriage.

## Power of Suspension

If a person, though not possessing any direct rights over the will of another, has nevertheless power over the *object of a vow* or a promissory oath, he can suspend the obligation of such vow or oath in so far and as long as its fulfillment runs counter to his rights (1312: 2).

Thus religious Superiors can suspend vows and promissory oaths of their novices and postulants, when the fulfillment of these would be counter to the organization's rights. The same holds good for parents and guardians in regard to their children; for married persons in regard to such vows or oaths made even before marriage, when they run counter to the fulfillment of marital rights; for masters in regard to such vows or oaths of their servants as would interfere with the latter's fulfillment of their proper duties.

## Power of Dispensation

A dispensation, unlike irritation and suspension, is the release of the obligation of a vow or promissory oath, granted by competent authority in the name of God.

In order that a dispensation be *valid,* besides proper authority on the part of the grantor, it is required (1) that there be a just reason (as, for example, the glory of God, the need of the Church, the State, or the family, the spiritual welfare of the person who has vowed, or on the part of the vow itself, lack of deliberation or some fear); (2) that the vow or promissory oath be not in favor of a third party who insists upon the fulfillment thereof. A *causa mediocriter gravis* suffices for valid dispensation, which latter holds good also when there is doubt as to the sufficiency (not the *existence*) of the cause (84:2). In all cases the person vowing or swearing must be willing to be dispensed.

In order that the dispensation be *licit* the ground for dispensing must correspond to the gravity of the vow or oath itself. In some cases the dispensation is to be connected with the commutation of the obligation into a lesser one (particularly when there was full deliberation and freedom in taking on the original obligation).

The *Superior of an exempt clerical* organization, under the conditions given above, can dispense his sub-

jects from all *non-reserved* vows and promissory oaths (1313: 2°).

The *confessors* of Regular Orders, by virtue of special privilege, have, in relation to their secular penitents, the same faculties, under similar conditions.

Pastors and ordinary confessors as such have no faculties to dispense in these matters. Consequently, where irritation, suspension, or commutation do not apply, they must direct the faithful to some one properly empowered or themselves obtain necessary authorization from the Sacred Penitentiary or the Ordinary. The latter has ordinary power in these matters similar to those of religious superiors relative to their subjects (1313:1°; 1329).

## Power of Commutation

Commutation of a vow or promissory oath consists in replacing or changing for another the good work promised. The exchange may be for either an equal, a better, or a less good work, according as the substituted work is equally, or more, or less, efficient for the glory of God or the good of the soul of the person promising.

Reserved vows can be commuted only with apostolic authorization; vows in favor of a third party, only with the

latter's consent, even when the work to be substituted is equally as good or better than the original.

Vows and promissory oaths other than those just mentioned can be commuted into an equally good or better work by the promisor himself, without any special faculties. But a commutation *in minus bonum* becomes equivalent to a dispensation and is subject to the same regulations.

A *causa iusta* is required for the *licitness* of a commutation *in opus aequale,* and for the *validity* also of the commutation *in minus bonum.* The reasons, in cases of commutation, however, need not be as important as those required for dispensation. The following would be sufficient: a greater subjective inclination for the substitute work, and the consequent better assurance of fulfillment; lessening of danger of non-fulfillment of the vow or promissory oath.

# THIRD PART

## Faculties for Dispensation Regarding the Contraction of Marriage

### Matrimonial Impediments

*Impeding Impediments* are such as forbid the contraction of marriage but do not invalidate or nullify the same. They are at present the following three:

1. The simple *vows* of virginity,[1] perfect chastity, never to marry, to receive major Orders, to enter the religious life (1058: 1). The last holds good even for entering a Congregation (487).

2. *Legal relationship* (*cognatio legalis*) as between persons adopting and their adoptive children, in so far as the civil law of various countries forbids marriage on this account (1059).

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[1] "*Vovens castitatem promittit abstinere ab omni delectatione venerea sive illicita, sive licita in matrimonio,*" Noldin, *Summa Theol. Moral.*, III, 562.

3. *Mixed Religion;* that is, the difference of belief and practice existing between a Catholic and a baptized heretic or schismatic (1060).

Two conditions are preliminary to the granting of a dispensation in the matter of *mixed religion:* (1) the presence of just and serious reasons (*iustae ac graves causae*); (2) a morally reliable guarantee (*cautio*), regularly to be given in writing, (*a*) on the part of the non-Catholic, to remove any danger of religious perversion of the Catholic; and (*b*) on the part of both Catholic and non-Catholic, of the exclusively Catholic Baptism and education of all issue (1061).

The Catholic, moreover, is further bound prudently to strive for the conversion of the non-Catholic (1062), but a formal promise to this effect is not required. No formal promise, likewise, is exacted from the non-Catholic to prevent a declaration of marital consent before some non-Catholic minister of religion, either before or after the Catholic marriage (1063:1).

In this matter the penalties of excommunication reserved to the Ordinary may be seen on p. 42.

Here may be furthermore enumerated certain precepts forbidding marriage, which are no longer canonical impediments. Such are:

1. The *vetitum ecclesiae;* that is, the temporary pro-

hibition of an individual marriage, emanating from the Ordinary, for a just reason (1039: 1).

2. The *tempus clausum,* whereby the celebration of marriage with nuptial blessing is not allowed during the time between the First Sunday of Advent and Christmas and between Ash Wednesday and Easter Sunday, inclusive, in both cases (1108: 1, 2). However, for just cause the Ordinary may give permission for nuptial Mass even during the closed time, requesting the parties to refrain from notable external show (1108: 3).

3. *Engagement valid canonically,* made, in writing, according to the stipulations of Canon 1017.

4. *Lack of parental consent,* in the case of minors, which necessitates consulting the Ordinary (1034).

*Diriment Impediments,* which absolutely nullify the contraction of marriage, are the following thirteen:

1. *Lack of nubile age,* in the canonical, not the natural sense. Men must have completed the 16th, women the 14th year of age (1067: 1).

2. *Sexual impotence, "antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive alteri cognita*

*sive non, sive absoluta sive relativa"* (1068: 1). If this impediment is legally or factually doubtful, the marriage is not to be prevented (1068: 2); thus the difficulty regarding the case of *"extirpatio uteri et ovariorum"* is practically solved. *Sterility* is not a matrimonial impediment (1068: 3).

3. *Previous matrimonial contract* still existing (*ligamen;* 1069: 1). A new matrimonial contract can not be entered upon before the nullity or dissolution of any previous marriage, whether civil or religious, has been legitimately and surely established (1069: 2).

4. *Disparity of cult,* as existing between Catholics and unbaptized persons such as Jews, Mohammedans, heathens, and all other persons either not baptized at all or certainly invalidly baptized (1070: 1).

Any person who has been baptized in the Catholic Church or has entered the same as a convert from heresy or schism, is considered a Catholic for the purposes of this impediment. The marriages of validly baptized heretics or schismatics are not affected by this Canon. Requirements for dispensation are the same as those for the impediment *mixtae religionis* (1071: see p. 76).

In case of doubt concerning the Baptism of the non-Catholic party, a marriage already contracted is to be con-

sidered valid, until the absence or nullity of the Baptism of the non-Catholic has been definitely established (1070:2).

5. *Major Orders* (*ordo sacer;* 1072).—When, however, it is legally proved that a person received the subdiaconate *under the influence of grave fear* and after the removal of that fear in no wise expressly or implicitly ratified his ordination, this impediment does not hold good (214).

6. *Solemn Vows,* and even simple religious vows when the latter through special declaration of the Holy See have a nullifying effect upon the marriage contract (1073).

7. *Rape,* or *Abduction* when the woman has been kidnapped, or even when she is being kept by force in some place which she freely entered, when such violence has been applied for the purpose of coercing marriage. This impediment ceases as soon as the woman is out of the power of the raptor (1074).

8. *Crime;* that is:

(*a*) *"Adulterium cum promissione matrimonii."*

(*b*) *"Adulterium cum attentatione matri-*

*monii,"* even when the latter is only civil.

(*c*) *"Adulterium cum coniugicidio, uno patrante."*

(*d*) Moral or physical coöperation in conjugicide (*"coniugicidium utroque patrante"*; 1075).

9. *Consanguinity* in all degrees of direct descent and to the third degree, inclusive of indirect descent —second cousins (1076: 1, 2). This impediment is induced by blood relationship arising from either marital or illegitimate intercourse. Compounding of this impediment takes place when persons' relationship can be traced to more than one common stem.

10. *Affinity* arising only from valid sacramental marriage (whether consummated or not) in all degrees of direct relationship, and to the second degree, inclusive of indirect relationship (1077: 1; 97: 1, 2). Compounding of this impediment takes place by compounding of the underlying consanguinity of the other party, or when a widowed party enters into valid mar-

riage with a blood relative of the deceased party to the former marriage (1077: 2).

11. *Public Decency* (*publica honestas*), arising from an invalid marriage or from public or notorious concubinage, invalidates marriage with blood relatives of the other party to the second degree of direct relationship, inclusive (1078; see also 2197).

12. *Spiritual Relationship* (*cognatio spiritualis*) originating in Baptism, whereby marriage is nullified between the person baptizing and the one baptized by him, and likewise between either of the godparents and the godchild (1079). For conditions establishing this relationship in the latter case see Canons 762: 2; 763: 2; 765.

13. *Legal Relationship* (*cognatio legalis*) arising from adoption, is a diriment impediment when it is considered such by the law of the land (1080).

*Defects in Matrimonial Consent* which have the effect of diriment impediments, are the following four:

1. *Ignorance* of the nature of marriage as the permanent community of life between a man and a woman for the procreation of children (1082: 1). The law

does not presume such ignorance after the age of puberty (1082: 2).

Ignorance, however, of the unity, indissolubility, or sacramental character of marriage does not affect the validity (1084), unless it should be included as a formal condition in the marriage contract (1092).

2. *Error* regarding the other contracting party invalidates the marriage consent (*a*) when it is a case of *mistaken identity* (*error circa personam*); (*b*) when the mistake is in regard to such a quality of the person as to be practically a mistake in identity (as, being a first-born: *error circa qualitatem personae redundans in errorem personae*); (*c*) when a freeman by mistake considers the other party free when the latter is in fact a slave (1083: 2, 2°).

3. *Coercion* or *fear* externally and unjustly brought to bear upon a person for the purpose of necessitating marriage (1087: 1).

4. A *Condition* attached to the marriage contract itself, invalidates it, (*a*) if it is a *"conditio de futuro contra matrimonii substantiam"* (1092: 2°); that is, when it excludes an essential ingredient of marriage, such as unity, sacramentality, indissolubility, right to

conjugal intercourse (1086: 2); (*b*) any condition of the past or present which has not been fulfilled (1092: 4°).

If a morally allowable condition *"de futuro"* is attached, the realization of marriage is put off until said condition has been fulfilled (1092:3°). An immoral, or impossible, or necessarily happening condition *"de futuro"* is in law considered as not attached, except it should be against the very nature of marriage (1092:1°).

### Prescribed Form of Contracting Marriage

*Ordinarily,* in order to be valid, marriage has to be contracted before the pastor or the local Ordinary or a priest properly delegated by either of these two, and at least two other witnesses (1094).

In this matter all the priests enumerated on p. 5 are considered as pastors, except the Rectors of clerical seminaries (1368) and Religious Superiors.

*Delegation* in this matter must be *express,* given to a *definite priest,* and for a *definite marriage:* otherwise it is invalid. A general delegation for "occurring cases" can be validly granted only to ordinary assistant vicars (*vicarii cooperatores*) for the parish in which they are appointed (1096:1). The substitute vicar (*vicarius substitutus*), who is to be appointed whenever the pastor is about to be absent over

seven days, has of course ordinary and not delegated power in this matter (465:4; 476). The delegating Ordinary or pastor can empower his own delegate also to subdelegate his authoritative assistance at a marriage (199:3–5).

It is to be noted that authoritative assistance at marriage on the part of the Ordinary or pastor or their delegates is valid only *within their respective territories.* Outside of these they cannot assist validly at the marriages *even of their own subjects,* unless properly delegated. Within their own territory, however, their assistance is valid even for non-subjects, strangers (1095:2). Personal pastors, like court, family, and military chaplains, can validly and licitly assist at the marriages of their own subjects *anywhere* (S. Congr. Council, Feb. 1, 1908, *ad VII*).

For the licitness of assistance at the marriage of non-subjects, the permission of pastor or Ordinary of the persons to be married, preferably the bride's, is required (1097:1, 2).

*Extraordinarily,* marriage may be validly and licitly contracted in the presence of two witnesses, *without* the assistance of pastor, Ordinary, or their delegate, in the following two cases (1098):

1. In danger of death, when it is impossible to call or approach the Ordinary or pastor or a priest properly delegated without serious inconvenience.

2. At other times, whenever the same moral impossibility is foreseen to last a month.

In both these cases, should a simple priest be available, he should be called in to assist at the marriage with the other two witnesses, although this is not required for validity (1098:2). Under certain circumstances he has faculties for dispensations that may be useful or necessary (see pp. 87–89 below).

The canonically prescribed form for contracting marriage must be followed by all persons baptized in the Catholic Church, or converted thereto from heresy or schism (even if they have later on apostatized) when they contract marriage either among themselves or with baptized or unbaptized non-Catholics (in the latter case even after having obtained dispensations *mixtae religionis* or *disparitatis cultus*); and by members of Oriental rites [2] whenever they contract with a person of the Latin rite (1099:1). The following are not bound to the canonical form unless they wish to contract with a Catholic: baptized or unbaptized non-Catholics; children of non-Catholic parents, even when they have been baptized in the Catholic Church, if from childhood (before the age of seven) they have been brought up in heresy or schism or infidelity or without any religion at all (1099:2).

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[2] Oriental rite Catholics, according to Canon 1, do not of themselves fall under the prescriptions of the Code.

## Dispensation Faculties for Matrimonial Impediments and the Prescribed Form

*In danger of death* (*urgente mortis periculo*) of either party to be married,[3] for the purpose of quieting conscience [4] and, where required, for the legitimization of offspring, the following persons, by grant of the law itself, have special dispensation faculties (1043): (1) the local Ordinary; and, if the former can not be communicated with personally or by mail (telephone and telegraph are not obligatory), the *pastor* for his own subjects anywhere, and for all within his territory; (2) the *priest* summoned to assist with the two witnesses at a marriage contracted in the *extraordinary* form; (3) the *confessor "pro foro interno"* and *"in actu sacramentalis confessionis tantum"* and only in cases when he can not communicate with the Ordinary, as mentioned above.

[3] It is immaterial whether the person dying or the other party is the one in need of dispensation.

[4] This is the *"iusta et rationabilis causa"* required by these cases for validity, (84:1).

The *faculties* granted in this case *extend* to the following dispensations:

(1) From the prescribed canonical form of marriage.

(2) From *all* impeding or diriment *purely ecclesiastical impediments,* with the exception of priesthood and affinity in direct line arising from an already consummated marriage (1043).

Of course, impediments not purely ecclesiastical are of their own nature indispensable: such are the impediments which certainly or at least possibly are founded upon *natural law,* as sexual impotence (1068:1), consanguinity in the direct and in the first degree of the side line, and the various defects of marital consent enumerated on pp. 81, 82, likewise the impediment of previous marriage persisting, which is of *divine positive law.*

With such dispensations is included the legitimization of any offspring of the couple, unless it be of adulterous or sacrilegious origin (1051).

*Requirements* for such dispensations are: (*a*) the prevention of scandal (especially in the case of conjugicide, of solemn profession, of diaconate or subdiaconate); (*b*) the provision of the prescribed guarantees (*cautiones*) in impediments *mixtae religionis* and *disparitatis cultus* (lack of these would make the dispensation invalid); (*c*) the dispensing pastor or priest must immediately communicate the

dispensation granted *pro foro externo* to the Ordinary, and likewise make note of the dispensation in the matrimonial register (1046).

*Outside the danger of death* special dispensation faculties are granted by the Church in the following two cases of *occult* impediments only:

1. In the *Casus Perplexus,* when an impediment is discovered only when everything is already arranged for the marriage, and the wedding can not, without serious danger of grave evil, such as scandal or injury to good name, be put off until a dispensation can be requested from the Holy See.

2. In the case of *validation of a marriage* previously contracted invalidly, under the same conditions as above (1045: 1, 2). The danger of sinful intercourse in such cases is to be taken into consideration.

These faculties extend to all the impediments covered by faculties granted in danger of death (see above), but *not* to lack of canonical form—*nor* to any impediments that are *not occult* (1045: 1, 3).

*Requirements* are the same as in case of death. Bearers of these faculties (besides the local Ordinary) are, first of all, *pastors,* on condition that it is either morally impossible

to communicate with the Ordinary, or that they can not do so without violating the secret confided; secondly, the *priest* called in when the marriage contract is made in the *extraordinary form;* lastly, *pro foro interno,* the *confessor "in actu sacramentalis confessionis,"* when he too either can not communicate with the Ordinary at all, or can do so only with danger of violation of the seal of confession.

For all other cases of matrimonial dispensations there is need of special delegation from the Holy See or the Ordinary (1040). The latter is empowered by law to dispense in cases of non-reserved vows prohibiting marriage (1309; 1313); concerning the *tempus clausum* (1108: 3); and with matrimonial impediments whost fact is doubtful, in so far as the Holy See itself usually dispenses (15).

In granting or executing matrimonial dispensations, Canons 1047-1057 should be noted. Other details on the licit and valid assistance of Ordinary or pastor or properly authorized delegate will be found in Canons 1095-1097.

# FOURTH PART

## Faculties for Dispensation Regarding Irregularities

*Irregularities* are impediments to the reception of the tonsure and of Orders, and to the exercise of Orders already received. These have their origin in some *defect* or *crime,* and are established by the Church to preserve the dignity of the clerical state. Irregularities *ex delicto* have also a punitive aspect (983).

Irregularities have a practical bearing only for major Orders, as at present the minor Orders may also be exercised by laymen. They forbid, but never invalidate the reception of Orders.

They are not to be confused with *impedimenta temporaria* by which the following persons are excluded from ordination: (1) sons of non-Catholic parents, or of mixed marriages, so long as the non-Catholic parties or party persist in their error (Commission for Interpret. of the Code, Oct. 16, 1919, *ad XIII*); (2) married men; (3) men holding an office or carrying on a business forbidden to clerics (139:3) of which

they have to give an account, until they have resigned office or business and closed their responsible accounts; slaves, before they have been freed; (5) men liable to ordinary military service by State law, until they have fulfilled their service; (6) converts, until, in the Ordinary's judgment, they have been sufficiently tried; (7) those under *infamia facti* (2293:3), until their character, in the Ordinary's judgment, is cleared (987).

Regarding irregularities *ex defectu* the law grants *no faculties* of dispensation. These irregularities are listed in Canon 984.

The following persons are considered irregular *ex delicto* (985):

1. Apostates, heretics, and schismatics.

2. Such as have allowed themselves to be baptized by non-Catholics, except when this was done under stress of extreme necessity.

3. Such as have attempted ecclesiastically or civilly to contract marriage, whilst they or their female associates were impeded by the *impedimentum ligaminis, ordinis sacri,* or *professionis religiosae.* Simple and temporary profession is included in the last.

4. Such as have committed, or coöperated toward, murder, manslaughter, or abortion, *effectu sequuto.*

5. Such as have mutilated themselves or others, or have attempted suicide.

6. Clerics who have practiced medicine or surgery contrary to Canon Law, when death of the patient has followed therefrom (139: 2).

7. Such as exercise an act of Orders reserved to clerics of major Orders, when they themselves have not yet received such Orders, or are prohibited from exercising such Orders by excommunication, suspension, personal or local interdict, or vindictive punishment.

To bring about irregularity, any of the above mentioned *delicta* must be objectively and subjectively mortally sinful, externally recognizable (even if occult), and committed after Baptism (with exception of No. 2). *Ignorance* of irregularities or of the *impedimenta temporaria* previously enumerated, does not excuse from their incurrence (988).

Irregularity *ex delicto* may be compounded by the commission of specifically distinct *delicta,* or by repetition of murder or manslaughter (989).

## Dispensation Faculties for Irregularities "Ex Delicto"

*In Casibus Urgentioribus,* when the Ordinary can not be communicated with and there is danger of serious damage or injury to one's good name, every *confessor* can dispense clerics of major Orders from any irregularity *ex delicto occulto,* except those arising from murder or manslaughter, or abortion and coöperation therein, and except where the irregularity has already been brought into the ecclesiastical courts. The dispensation, moreover, can permit only the exercise of Orders already received (990: 1, 2).

*Confessors* belonging to *Regular Orders* in the strict sense, from ancient privilege (Sixtus IV and Julius II; see Canon 4) have in regard to irregularities *ex delicto occulto* the same faculties as local Ordinaries in regard to secular clerics and lay persons (990: 1), even outside of urgent cases, and also for the purpose of receiving Orders.

Further faculties may be obtained in public cases, by petition to the S. Congr. for Sacraments (249:2). But for

members of religious organizations, the S. Congr. of Religious is to be applied to (251:3). For irregularities *ex delicto* of secular *priests* (not seculars of lower Orders, or none) the S. Congr. of the Council should be consulted (250:1; S. Consist. Congr. Feb. 27, 1909, and Nov. 28, 1911). *Pro foro interno* the S. Penitentiary is competent.

If recourse to Rome is difficult and there is danger of grave injury from delay, the local Ordinary is empowered to dispose of all irregularities (81).

In granting or executing a dispensation based upon a rescript, the stipulations of the Code in regard to rescripts are to be observed (36-62). There is no special form prescribed for dispensing. The following may be used: *"Dispenso tecum in irregularitate quam ob (haeresim, illicitum ordinis exercitium,* etc.) *incurristi, in nomine Patris et Filii et Spiritus Sancti. Amen."*

# FIFTH PART

## Faculties for Dispensation Regarding Vindictive Penalties

A vindictive penalty is an ecclesiastical punishment inflicted by law or by an ecclesiastical judge for the purpose of atoning for some offense (2286). Its purpose distinguishes it from the *poena medecinalis* or censure, which is imposed for the betterment of the guilty person.

As with censures, vindictive punishments are divided into:

1. Those which are *latae sententiae* and those which are *ferendae sententiae* (2217: 1, 2°).

2. Those which are *a iure* and those which are *ab homine* (2217: 1, 3°).

3. Those which may apply to all the faithful (2291), and those which apply peculiarly to clerics (2298).

Vindictive penalties *latae sententiae* are the only ones to be considered here. In order that these be actually incurred, the offense must be (*a*) external (2195: 1); (*b*) mortally sinful (2218: 2); and (*c*) complete in the species determined by law (2228). Moreover, the guilty person must have reached the age of puberty (2230).

## Subjective Reasons Excusing from Incurrence of Vindictive Penalties "Latae Sententiae"

Under no circumstances does *intentional* ignorance of either the law or the penalty excuse (2229: 1).

If the letter of the law demands full understanding and deliberation (as by the phrases *"praesumpserit, ausus fuerit, scienter egerit"*), then any factor diminishing responsibility (2001-2006), such as ignorance, carelessness, misunderstanding, fear, etc., is sufficient excuse (2229: 2).

When full understanding and deliberation are not stipulated, the divers factors diminishing responsibility excuse only when their influence makes the offense venially sinful (2229: 3), 1°, 2°). Grave fear excuses

only when it does not lead to contempt of faith or ecclesiastical authority or scandal of the faithful (2229: 3, 3°).

## Important Vindictive Penalties "Latae Sententiae"

*Infamia iuris* is the official loss of character or good name, disgrace (felony), which a person incurs *ipso facto* by the commission of certain crimes, or which is decreed by an ecclesiastical judge (2314: 1; 2359: 2). It has the following effects: it makes one irregular (984: 5); it makes one incapable of (*a*) acquiring ecclesiastical benefices, dignities, offices, income; (*b*) of performing *actus legitimi ecclesiastici* (see below); (*c*) exercising any ecclesiastical right or authority; (*d*) ministering at ecclesiastical services (2294: 1).

*Infamia iuris* is incurred by:

1. Apostates, heretics, schismatics who join a non-Catholic religious organization, or simply belong to it without formal incorporation (2314: 1-3).

2. Persons who sacrilegiously dishonor consecrated species (2320).

3. Ghouls, who violate the bodies or graves of the dead (2328) to steal, or for other nefarious purposes.

4. Persons laying violent hand upon the person of the Pope, a Cardinal, or a Papal Legate (2343: 1, 2).

5. The principals and seconds in a duel (2351: 2).

6. Bigamists; that is, such as attempt to marry, even civilly, whilst still bound by the marriage tie (*bigamia simultanea;* 2356).

7. Lay persons who have been legitimately convicted in civil court of immoral actions with persons below the age of sixteen, or of rape, sodomy, incest, or pandering (2357).

*Exclusion from actus legitimi ecclesiastici* bars a person from such acts as: administering ecclesiastical goods, functioning as official in ecclesiastical courts, being godparent or sponsor at Baptism or Confirmation (765: 2; 766: 2; 795: 2; 796: 3), exercising the right of active vote, or of patronage (2256: 2).

This penalty affects *ipso facto:*

1. All excommunicated persons (2263).
2. All canonically disgraced persons (*infames;* 2294:1).

3. Those who abduct an adult woman against her will by violence or trickery, or a girl minor even with her agreement but without the consent of her parents or guardian, in either case for the purpose of marriage or of immoral use (2353).

4. Lay persons who have been legitimately convicted by a civil court of murder, seduction of children under the age of puberty, selling persons into slavery, or for any other evil purpose, usury, robbery, stealing (qualified), arson, gravely malicious destruction of property, serious mutilation, wounding, or violence (2354:1).

5. Catholics who enter any kind of mixed marriage, whether valid or not, without the proper dispensation (2375).

6. Professed of perpetual vows who are guilty of apostasy from their religious organization (2385).

*Other vindictive penalties "latae sententiae"* are the following:

*The interdict* of Canon 2338:3 (see also p. 45).

Various *suspensions* of Canons 2387; 2410; 2370; 2373 (see also pp. 45–47).

Loss of faculty to administer Confirmation, for priests, who exceed their papal privilege (2365).

Loss of privileges of his or her religious organization, as well as loss of active and passive vote, for the apostate Religious (2385).

Loss of office held in religion, for the fugitive Religious (2386).

Loss of vote and incapability of election to ecclesiastical office, for various grounds (2390:2; 2398).

Loss of office held in the Church, for lay persons mentioned in No. 4 above (2354:1).

Exclusion from the sacramentals, for Catholics entering mixed marriage without proper dispensation (2375).

## Faculties of Confessors Regarding Vindictive Penalties

In *urgent occult cases* every approved confessor has special faculties of suspending or dispensing vindictive penalties *latae sententiae*. These can be applied only when the person who has incurred the penalty, by its observance would betray himself, to the injury of his good name and to the scandal of others (2290: 1).

In such a case the confessor *"in actu sacramentalis confessionis"* is empowered to *suspend* the obligation of observing the penalty incurred, at the same time binding the penitent to have recourse within a month to the Sacred Penitentiary, if it can be done without injury, or to the properly authorized Bishop, to receive and acquiesce in the *mandata*.

This recourse is to be made by the penitent either personally or in writing, or through the intermediation of the con-

fessor, who then has to keep confidential the name of the penitent.

If the above mentioned recourse is, in an extraordinary case, practically impossible (possible only with danger of injury to character), then the confessor himself can *dispense* the penitent from the penalty incurred, without obliging him to recourse (2290: 2).

At the same time the confessor has to oblige the penitent to perform a proportionate penance within a definite time, and to make satisfaction for any injury done. If the penitent omits to do this, he reincurs the previous penalty (2290: 2; 2254: 3).

# APPENDIX

## Forms for Petitions of Faculties or for Recourse

I. *Petition Regarding Diocesan Reserved Case.*

Reverendissime Vicariatus Generalis:

Infrascripto confessario a Reverendissimo Ordinario approbato occurrit casus in hac dioecesi reservatus, scil.....

Cum expedire videatur, ut poenitens ceteroquin rite dispositus ad me redeat, humiliter supplico, ut mihi a Reverendissimo Vicariatu Generali facultas concedatur, pro hac vice a praedicto casu reservato absolvendi.

Omni qua par est reverentia subscribit

N. N.

This is to be addressed to the Bishop, Vicar General, or Diocesan Chancery.

II. *Petition Regarding Censure Reserved to the Ordinary.*

Reverendissime Vicariatus Generalis:

Titia contraxit excommunicationem Ordinario reservatam (procurando scil. cum effectu abortum . . .). Nunc vero huius delicti sincere poenitens humiliter petit absolutionem.

Quapropter Rev.mus Vicariatus Generalis absolvendi ab hac censura facultatem mihi pro ista vice impertiri dignetur.

This is to be addressed to the Bishop, Vicar General, or Diocesan Chancery.

III. *Recourse to the Sacred Penitentiary.*

Eminentissime et Reverendissime Domine:

Titius contraxit censuram speciali (simplici) modo Romano Pontifici reservatam propter (lectionem librorum prohibitorum . . . patratum duellum). Cum ipse nec ad confessarium privilegiatum accedere nec sine absolutione dimitti posset et ceteroquin rite dispositus videretur, absolutionem recepit. Nunc vero ad obediendum ecclesiae praescriptis per me infrascriptum confessarium ad S. Sedem recurrit ad accipienda mandata, paratus implere poenitentiam quam in poenam delicti Eminentia Vestra praescribet.

Dignetur Eminentia Vestra responsum ad me infrascriptum confessarium (*perhaps:* mediante agente curiae episcopalis N. N. . . . in urbe) dirigere.

S. Purpuram reverenter deosculans, summa qua par est devotione permaneo

Eminentiae Vestrae humillimus et obsequentissimus

Eminentissimo Principi,

. . . . . .

Card. Poenitentiario Maiori. (*Signature*)

If the censure reserved to the Pope *simplici modo* is occult, it is sufficient to make the recourse to the Ordinary (2237: 2). The address of the S. Penitentiary Tribunal is: *"A Sua Eminenza Ill.ma e Rev.ma, Il Sig. Cardinale Penitenziorio Maggiore, Palazzo del Sant' Ufficio, Rome, Italy."*

IV. *Petition for the Reconciliation of a Heretic (Convert).*

Reverendissime Vicariatus Generalis:

N. N. viginti annos natus, oriundus ex N., hactenus sectam (Calvinianam) professus, ad me, parochum loci N., accessit, enixe postulans, ut in ecclesiam Romano-

Catholicam recipiatur; ipsum instruxi (vel instruendum curavi) in principiis, mysteriis, et obligationibus religionis Catholicae, videturque ille ex vero salutis desiderio velle sectam haereticam deserere. Factis inquisitionibus circa eius Baptismum nihil aliud comperire potui, quam quod . . . (exprimatur hic, quid compertum fuerit); quare dignetur Reverendissimus Vicariatus Generalis praescribere, quid circa eius Baptismum sit agendum, meque deputare ad fidei professionem ab eo recipiendam, et absolutionem a censura propter haeresim contracta eidem impertiendam.

Omni qua par est reverentia subscribit

N. N.

This is to be addressed to the Bishop, Vicar General, or Diocesan Chancery. In the United States confessors are generally empowered to receive converts into the Church; each should in this matter consult his diocesan *pagella.*

V. *Petition for Dispensation from Eucharistic Fast.*

Eminentissime et Reverendissime Domine:

N. N., Dioecesis N., tanta corporis debilitate tantoque stomachi languore premitur, ut eidem mor-

aliter impossibile evadat observare ieiunium naturale praescriptum ad S. Communionem recipiendam. Hinc humilis Orator a Sanctitate Vestra supplici genu postulat, quatenus ipsi concedere dignetur facultatem sumendi aliquid per modum potus, antequam ad sacram synaxim recipiendam accedat.

Dignetur Eminentia Vestra, etc.

The address for the S. Congr. of Sacraments is: *"A Sua Eminenza Ill.ma e Rev.ma, Il Card. Prefetto della S. Cong. dei Sacramenti, Palazzo della Cancelleria Apostolica, Rome, Italy."*

VI. *Petition for Dispensation from Irregularity "ex delicto."*

Reverendissime Vicariatus Generalis:

N. N., clericus ordinum minorum ex hac dioecesi, irregularitatem ex delicto (haeresis, illiciti exercitii ordinis sacri etc. . . . ) contraxit. Nunc vere poenitens (si casus fert: et a vinculo excommunicationis solutus) ad sacros ordines ascendere desiderat.

Quapropter infrascriptus sacerdos (parochus, confessarius) enixe rogat, ut sibi a Reverendissimo

Vicariatu Generali facultas concedatur, supradictum clericum ad normam Can. 990 § 1 CJC ab irregularitate contracta dispensandi, ita ut sacros ordines licite suscipere valeat.

Omni qua par est reverentia subscribit

N. N.

## Formula of Faculties

### Generally Granted Bishops of America

*(From Document of S. Consistorial Congr., March 17th, 1922.)*

These are faculties beyond the ordinary powers local Ordinaries have according to the Code. They are to be requested from the respective Congregations at the time the bishop makes his quinquennial report to the Holy See, and last until the next report is made. Pastors and confessors will do well to acquaint themselves with the powers their Ordinaries have at disposal (some of which may be sub-delegated), particularly in the matters of absolution and dispensation.

Included in the faculties of the Holy Office are power: (1) to grant permission to clerics and laymen *ad tempus* to read forbidden books; (2) to grant dispensations from mixed marriages and disparity of cult.

Included in the faculties of the S. Congregation of Sacraments are power: (1) to grant dispensations from minor impediments of marriage enumerated in Canon 1042, and from simple vow of virginity and chastity, mentioned in Canon 1058; (2) in urgent cases, which allow no delay and appeal to the Holy See, to grant a dispensation from consanguinity in the second or third degree, mixed with the first, and in the second collateral; affinity in the first degree of

the collateral line, equal to or mixed with the second; public decency in the first degree, provided it is certain that a party is not the child of the other party to a marriage; (3) at the time of episcopal visitation, or at the time of missions only, power to dispense those living in concubinage; from all the above-named impediments to marriage; (4) *sanatio in radice* of marriages for reason of impediments of minor degree.

Among the faculties granted by the S. Congregation of the Council are: (1) power to reduce the perpetual foundation of Masses when the income has decreased; (3) transfer of foundation Masses to other churches, and also outside the diocese; (3) private anticipation of Matins and Lauds after 1 P. M.; (4) alienation of ecclesiastical goods to the amount of $10,000.

Among the faculties granted by the S. Congregation of Religious are power: (1) to dispense candidates intending to enter religion from illegitimacy, if the constitutions demand dispensation (the dispensation does not extend to election to the office of major superior); (2) to allow Religious not included in Canon 821, 3, to have three Masses in their churches at midnight on Christmas day; (3) to dispense candidates of religious communities who are beyond the age limit of the constitutions, at the request of the general or provincial superior and the respective councils, provided candidates are not over forty years of age; (4) to dispense with the age for ordination to priesthood, also exempt Religious (the number of months is left blank in the formula); (5) to dispense nuns and

Sisters from the dowry, in whole or in part; (6) to appoint confessors for religious women for a fourth or fifth term at the request of a majority of the community; (7) to allow Holy Mass on Holy Thursday; (8) to allow nuns with solemn vows to enter that part of their church which is outside the enclosure for the purpose of cleaning or decorating the church (all lay people must be outside the church and the doors locked); (9) to allow nuns in papal enclosure to leave the enclosure for an urgent operation.

Included in the faculties of the S. Congregation of Rites are power: (1) to delegate priests to consecrate fixed and portable altars according to the rite of the *Pontificale* (they should be priests in ecclesiastical dignity, if possible, for portable altars the formula of the Roman Ritual may be used); (2) to delegate priests to reconsecrate execrated fixed altars and also portable altars (the short form may be used in the cases mentioned in Canon 1200, 2); (3) to delegate priests to consecrate chalices and patens (they should be priests in ecclesiastical dignity, if possible); (4) to allow priests who have to binate on Palm Sunday to drop the Passion in one Mass; (5) to delegate priests to bless marriages outside of Mass with prayers from the Nuptial Mass; (6) to delegate priests to bless and impose the five scapulars under one form; (7) to delegate priests, in case of a large number of people, to enroll in the five scapulars without the duty of entering the names of those enrolled; (8) to bless the holy oils with fewer assistants than the *Pontificale* prescribes;

(9) to allow the use of incense at High Mass without sacred ministers; (10) to allow the use of the *Memoriale Rituum* of Pope Benedict XIII for Holy Week and for blessing ashes, candles and palms in churches, public and semi-public oratories; (11) to bless, at the time of episcopal visitation, various articles requiring various forms with: *"Benedicat haec omnia Deus Pater, et Filius, et Spiritus Sanctus. Amen";* (12) to permit a bishop to say a Low Mass of Requiem in his private oratory once a week.

Under the faculties from the S. Penitentiary are power: (1) to absolve from heresy; (2) to absolve from the censure of reading forbidden books; (3) to absolve those who interfered with the exercise of ecclesiastical jurisdiction and had recourse to the lay power; (4) to absolve those who fought a duel; (5) to absolve Freemasons; (6) to absolve those who violated the enclosure of nuns, except when done for a criminal purpose; (7) to dispense *post matrimonium* those who lost the right to ask the *debitum* by a private vow of chastity; (8) to dispense, after marriage has been attempted, from the impediment of a crime *sine machinatione* (renewal of consent is necessary, but may be secret when marriage is considered valid in public); also to dispense before marriage if the crime is occult and *sine machinatione.*

(The above list has been reprinted from the *Homiletic and Pastoral Review* (Joseph F. Wagner, Inc., New York) of October, 1922, through the courtesy of Rev. Stanislaus Woywod, O. F. M.)

In very many cases of difficulties or doubts regarding dispensations of all kinds, or faculties, when they exceed the competence of the Ordinary, or for some reason can not well be brought to his attention, it is advisable to consult the Apostolic Delegation (1811 Biltmore St., Washington, D. C., for the United States: 520 Driveway West, Ottawa, Ont., for Canada: Calle 21, no. 271, Vedado, Havana, for Cuba and Porto Rico), which acts as clearing house between the Holy See and the respective country. The Apostolic Delegate has broad faculties whose extent is not published.

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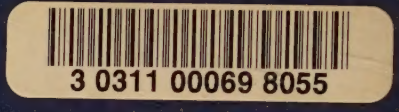
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